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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,367	12/27/2002	Rino Rappuoli	PP01651.102; 2302-1651	7808

7590 12/08/2005

Chiron Corporation
P O Box 8097
Emeryville, CA 94662-8097

EXAMINER

DEVI, SARVAMANGALA J N

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/089,367	Applicant(s) RAPPUOLI ET AL.	
	Examiner S. Devi, Ph.D.	Art Unit 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-34 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Lack of Unity

- 1) Claims 1-34 are under prosecution.
- 2) This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, Applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

- I. Claims 1-20, drawn to a mucosal DTPa vaccine comprising a diphtheria antigen, a tetanus antigen, and an acellular pertussis antigen, *E. coli* LT-K63 and/or LT-R72.
 - II. Claims 21-34, drawn to a method of generating an immune response in a patient by mucosally administering a mucosal DTPa vaccine comprising a diphtheria antigen, a tetanus antigen, and an acellular pertussis antigen and *E. coli* LT-K63 and/or LT-R72.
- 3) Inventions I and II lack unity of invention due to the absence of a special technical feature. The special technical feature of the product of invention I is a mucosal DTPa vaccine comprising a diphtheria antigen, a tetanus antigen, and an acellular pertussis antigen and *E. coli* LT-K63 and/or LT-R72. Such a product, however, was suggested in the art by the combined teachings of Ryan *et al.* (*Immunology Lett.* 69: 59, # 11.19, June 1999, already of record) and Hauser *et al.* (*Dev. Biol. Stand.* Basel, Karger, 95: 251-255, 1998, already of record). While Ryan *et al.* taught a nasally delivered acellular pertussis vaccine combined with a detoxified LTK63 or LTR72 (see abstract), Hauser *et al.* established the successful rapid lung clearance in mice following intranasal administration of DTPa, and also the need, suitability, and desirability of administering DTPa combination for infant immunization (see abstract; and page 255). With Hauser's express suggestion, it would have been obvious to one of skill in the art to replace Ryan's acellular pertussis vaccine with Hauser's DTPa combination to produce the DTPa vaccine claimed in invention I. Individually, the product of and the method of using the product are a permitted combination of categories under PCT Rule 13.2. However, since the special technical feature is already suggested in the art, the special technical feature does not define over the prior art. It is further noted that, technically,

the absence of a special technical feature would permit the separation of making or using the product from the product itself.

4) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center which receives transmissions 24 hours a day and 7 days a week. The transmission of such papers by facsimile must conform with the notice published in the Official Gazette, 1096 OG 30, November 15, 1989. The Fax number for submission of after-final amendments is (571) 273-8300.

5) Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAG or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.Mov>. Should you have questions on access to the Private PAA system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

6) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.


S. DEVI, PH.D.
PRIMARY EXAMINER

December, 2005